

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **A SPECIAL ORDER BY CONSENT ISSUED TO**

**David S. Wilson, Owner  
Pine Grove Park  
Permit Number VA0062316**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and David S. Wilson, Owner, Pine Grove Park, for the purpose of resolving certain violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. AVa. Code≡ means the Code of Virginia (1950), as amended.
2. ABoard≡ means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. ADepartment≡ or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. ADirector≡ means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "Owner" means David S. Wilson who owns and controls the Pine Grove Park wastewater treatment plant.
7. "Facility" means the wastewater treatment system at Pine Grove Park located near Clarksville, Virginia.
8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "PRO" means the Piedmont Regional Office of the DEQ, located in Glen Allen, Virginia.
10. "VPDES" means the Virginia Pollution Discharge Elimination System.
11. "Permit" means VPDES Permit number VA0062316 issued to Merifield Acres, Incorporated on February 17, 1998, and expired on February 17, 2003.
12. "Reissued Permit" means VPDES Permit number VA0062316 issued to Dave Wilson on February 17, 2003, and expires on February 16, 2008.
13. "DMR" means Discharge Monitoring Report.

**SECTION C: Findings of Facts and Conclusions of Law**

1. The Owner operates a Facility near Clarksville, Virginia. The Facility is the subject of VPDES Permit number VA0062316, which allows the Owner to discharge treated wastewater into an unnamed tributary of Lick Branch in the Roanoke River Basin in strict compliance with the terms, limitations, and requirements delineated in the Permit.
2. Lick Branch is reported on the DEQ 1998 and 2002 303(d) Total Maximum Daily Load Priority List, as required by the Clean Water Act 33 U.S.C. § 1313(d), to the Environmental Protection Agency ("EPA") as impaired for Ammonia Nitrogen.
3. Part I C of the Permit contains a four-year schedule of compliance for Ammonia Nitrogen with a final effluent limitation date of February 17, 2002. To achieve compliance the Owner was required to either upgrade the Facility, or demonstrate the current Facility was able to meet the Ammonia Nitrogen limit.

4. As reported on the March 2002 DMR, the Facility discharged an average monthly concentration of Ammonia Nitrogen over twice the Permit limit at 14.7.
5. Part I D of the Permit requires the Owner to monitor groundwater and to submit a plan of action for the mitigation and remediation of ground water within 60 days of notification if the DEQ determines that seepage from the Facility is having an adverse impact on groundwater quality. The DEQ records indicate that the Owner received such notification on or about January 18, 2000.
6. Groundwater monitoring samples submitted to the DEQ as of December 3, 2002, indicate that the Facility appears to continue to have an adverse impact on groundwater quality demonstrated by the exceedance of the Groundwater Standard for Ammonia Nitrogen provided at 9 VAC 25-260-220.
7. The DEQ has no record that the Owner submitted a plan of action for the mitigation and remediation of groundwater.
8. On December 18, 2001, the DEQ SCRO staff inspected the Facility and found it to be improperly operated and maintained. Duckweed covered the lagoon, solids covered the chlorination, dechlorination, and step aeration units, and there was insufficient chlorine to properly treat the wastewater.
9. On February 6, 2002, the DEQ SCRO staff inspected the Facility and found it to be improperly operated and maintained. Duckweed covered the lagoon, solids covered the chlorination, dechlorination, and step aeration units, and there was insufficient chlorine to properly treat the wastewater.
10. On March 5, 2002, the DEQ SCRO staff inspected the Facility and found the Owner had removed the solids from the chlorination, dechlorination, and step aeration units. The DEQ staff also found an unreported and untreated overflow from a manhole near the entrance of a residence.

11. From February 2001 through February 2003, the Owner received 13 Notices of Violations (“NOV”) numbers NOV-00-12-PRO-004, NOV-01-11-SCRO-001, NOV-02-01-SCRO-001, W2002-02-L-0002, W2002-03-L-0002, W2002-05-L-001, W2002-07-L-0001, W2002-08-L-0003, W2002-09-L-0002, W2002-10-L-0005, W2002-12-L-0002, W2003-01-L-0001, and W2003-02-L-0002 for improper operation and maintenance; failure to submit progress reports for 2001; failure to submit the 16<sup>th</sup> quarter groundwater monitoring report; failure to report groundwater elevation; failure to submit groundwater monitoring on copies of Attachment A of the Permit; failure to submit a plan of action for groundwater mitigation and/or remediation; improper and incomplete submission of DMRs; and, a total of 57 effluent limits violations of Biochemical Oxygen Demand (“BOD”), Dissolved Oxygen (“DO”), Total Suspended Solids (“TSS”), Ammonia Nitrogen, and Chlorine Instantaneous Residual Maximum.
12. On May 15, 2002, the DEQ SCRO received written notification from the Owner that construction for a new Facility had begun.
13. On May 30, 2002, the DEQ reported the Facility as a Special Emphasis Violator on the Quarterly Non Compliance Report (“QNCR”) to the EPA.
14. On August 1, 2002, the Owner began operating the new treatment system.
15. On November 7, 2002, the Owner submitted a draft closure plan for the treatment lagoon.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders the Owner, and the Owner agrees, to perform the actions contained in Appendix A of this Order. In addition, the Board orders the Owner, and the Owner consents, to pay a civil charge of \$19,950.00 in settlement of the violations cited in this Order. The civil charge shall be paid in four (4) installments delineated in this Section. The payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia”, and delivered to:

Receipts Control

Department of Environmental Quality

Post Office Box 10150

Richmond, Virginia 23240

The payment shall include the Owner's Federal Identification Number and shall state that it is being tendered in payment of the civil charge assessed under this Order. The schedule for payment of the civil charge is as follows:

1. July 30, 2003, \$4,987.50 is due
2. October 30, 2003, \$4,987.50 is due
3. January 30, 2004, \$4,987.50 is due
4. April 30, 2004, \$4,987.50 final payment due

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Owner, for good cause shown by the Owner, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves the matters specifically discussed herein, including matters up to the date this Order is issued. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Any violation of this Order may cause the Owner to incur an additional civil charge assessed by the Board, or civil penalty assessed by a court pursuant to Va. Code § 62.1-44.32.
3. For purposes of this Order and subsequent actions with respect to this Order, the Owner admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Owner consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Owner declares he has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State

Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by the Owner to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Owner shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other occurrence beyond the reasonable control of the Owner. The Owner shall demonstrate that such circumstances resulting in noncompliance were beyond the reasonable control of the Owner and not due to a lack of good faith or diligence; for any effluent limit violation the Owner shall establish an "Upset" pursuant to Part II V of the Reissued Permit. The Owner shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented

and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which the Owner intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by the Director, or his designee, and the Owner.
11. This Order shall continue in effect until:
  - a. The Owner petitions the Regional Director to terminate the Order after he has completed all requirements of the Order. The Director's determination that the Owner has satisfied all requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to the Owner. In the event of such termination all matters pertaining to compliance with the Permit up to the date this Order is issued shall be resolved as set forth in paragraph 2 of Section E unless the Owner fails to pay in full the civil charge set forth in Section D.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the Owner from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, the Owner consents to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

The Owner, David S. Wilson, consents to the issuance of this Order.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
David S. Wilson, Owner, Pine Grove Park

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2003, by David S. Wilson, Owner, Pine Grove Park.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

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## **Appendix A**

### **The Owner shall:**

1. By or before August 31, 2003, remove the source of groundwater impairment by closing the wastewater treatment lagoon in accordance with an approved Virginia Department of Health ("VDH") closure plan.
2. For one year from the issuance of this Order, operate and maintain the Facility in accordance with a VDH approved Operations and Maintenance Manual that is incorporated in the Owner's VPDES Reissued Permit, which reflects the new treatment system.
3. Compliance with item number 2 of Appendix A will be determined by an unannounced Facility inspection by DEQ within one year of the issuance of this Order.
4. For one year from the issuance of this Order, maintain substantial compliance with all of the VPDES Reissued Permit requirements. For the purposes of this Order "substantial compliance" means compliance sufficient to avoid the accumulation of four (4) points in the Department's Compliance Auditing System. Upon issuance of this Order the number of points shall be set at zero.
5. Compliance with item number 4 of Appendix A will be determined by the Department's review of DMRs and other required reports, or information contained in files maintained by the Department regarding Facility operations.
6. Unless otherwise specified in this Order, or in the Reissued Permit, all correspondence related to this Order shall be submitted to:

Harry F. Waggoner  
Virginia Department of Environmental Quality  
South Central Regional Office  
7705 Timberlake Road  
Lynchburg, Virginia 24502







